

APPEAL NO. 030117  
FILED MARCH 5, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 4, 2002. With respect to the issues before him, the hearing officer determined that the respondent/cross-appellant's (claimant) compensable injury of \_\_\_\_\_, extends to and includes right pronator tunnel syndrome, but does not extend to and include cubital tunnel syndrome. In its appeal, the appellant/cross-respondent (carrier) essentially argues that the extent-of-injury determination regarding the right pronator tunnel syndrome is against the great weight of the evidence. The claimant's response was untimely and cannot be addressed or considered. Likewise, the claimant's cross-appeal asserting that the extent-of-injury determination excluding the cubital tunnel syndrome was in error was untimely filed and cannot be addressed or considered.<sup>1</sup> Since there was no timely appeal of the determination that the compensable injury does not extend to and include cubital tunnel syndrome, that determination has become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the compensable injury includes right pronator tunnel syndrome. Conflicting evidence was presented on the disputed issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer was acting within his province as the fact finder in deciding to give more weight to the opinions of the treating doctors that the compensable injury caused the claimant's right pronator tunnel syndrome than contrary opinions offered by the carrier from two peer reviews by the same doctor. Our review of the record reveals that the hearing officer's extent-of-injury determination is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the challenged determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

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<sup>1</sup> The claimant failed to file his request for review or his response to the carrier's request for review within the time limits allowed by Section 410.202(a) or Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)). The claimant recites that he received the hearing officer's decision on December 26, 2002. To be timely, the request for review had to be mailed by January 17, 2003. The claimant initially mailed his request for review to the Texas Workers' Compensation Commission (Commission) on January 9, 2003, and it appears that it was returned for insufficient postage and then remailed on January 23, 2003. The claimant recites that he received the carrier's request for review on January 17, 2003. To be timely, a response would have to be mailed by February 10, 2003. He initially mailed his response to this request on February 6, 2003. It was returned for insufficient postage and remailed on February 11, 2003. Thus, since he failed to mail his request for review and response to the Commission within 15 days, the claimant's request for review and response are both untimely.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GARY SUDOL  
9330 LBJ FREEWAY, SUITE 1200  
DALLAS, TEXAS 75243.**

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Michael B. McShane  
Appeals Panel  
Manager/Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Edward Vilano  
Appeals Judge